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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

BANK OF WYOMING, a Wyoming
corporation,

PLAINTIFF,

vs.

No. 08-CV-0972-PK

DEFENDANT EXCELSIOR
DEVELOPMENT COMPANY'S
ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS

EXCELSIOR DEVELOPMENT COMPANY,
an Oregon general partnership,
JEFFREY L. CHAMBERLAIN,
THEADORE J. CHAMBERLAIN, **FAYE**
M. CHAMBERLAIN and **DONNA J.**
CHAMBERLAIN,

Jury Trial Demanded

DEFENDANTS.

For its answer to the Complaint, defendant Excelsior Development Company ("Defendant") admits, denies and alleges as follows:

1. Admits paragraph 1 to the extent that it is invoking, or attempting to invoke, diversity jurisdiction under 28 U.S.C. § 1332. Except as specifically admitted Defendant neither

admits nor denies the remainder of paragraph 1 as it contains no allegations.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of paragraph 2 and, therefore, denies the same.

3. Denies paragraph 3.

4. Paragraphs 4, 5, 6, 7, 8, and 9 do not contain allegations against Defendant and Defendant, therefore, neither admits nor denies those paragraphs. To the extent any of these paragraphs are construed to contain allegations against Defendant, Defendant denies those allegations.

5. Admits paragraphs 10, 11, 12, 13, 14, and 15.

6. Denies the amount alleged owing in paragraph 16 and admits the remainder of paragraph 16.

7. Admits paragraph 17, 18, and 19.

8. Denies paragraph 20.

9. Admits paragraph 21 and 22.

10. Denies paragraph 23 to the extent that partial payment has been made towards the note reducing the amount owed. Defendant admits the remainder of paragraph 23.

11. Denies paragraph 24.

12. Admits paragraph 25.

13. Denies paragraph 26 to the extent that partial payment has been made towards the note reducing the amount owed.

Defendant admits the remainder of paragraph 26.

14. Denies paragraph 27.

15. Paragraphs 28, 29 30, 31, and 32 do not contain allegations against Defendant. Defendant, therefore, neither admits nor denies those paragraphs. To the extent any of these paragraphs are construed to contain allegations against Defendant, Defendant denies those allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

1. Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (Payment)

2. Defendant has made at least partial payment towards the note. The amount alleged owing by Plaintiff, therefore, is incorrect.

COUNTERCLAIMS

FIRST COUNTERCLAIM (Attorney Fees)

1. Defendant is entitled to recover its reasonable attorney fees incurred herein pursuant to the promissory note and ORS 20.096.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing on Plaintiff's claims and

they be dismissed with prejudice;

2. That Defendant be awarded its reasonable attorney fees, costs, and disbursements incurred herein;
3. That the court grant such other relief as the court shall deem just and equitable.

Dated this 30th day of September, 2008.

HUYCKE, O'CONNOR, JARVIS & LOHMAN, LLP

By: 

Joseph R. Davis, OSB #98208
Telephone: (541) 772-1977
Attorneys for Defendant
Excelsior Development Company, an
Oregon general partnership


CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing DEFENDANT EXCELSIOR DEVELOPMENT COMPANY'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS on the date set forth below, true and correct copies were served by electronic notice through the federal court's ECF system, upon the following:

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Dated this 30th day of September, 2008.



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